

AMENDED IN ASSEMBLY MAY 23, 2008

AMENDED IN ASSEMBLY APRIL 10, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 2842

Introduced by Assembly Member Berg

February 22, 2008

An act to add Section 1361.1 to the Health and Safety Code, and to add Section 790.037 to the Insurance Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

AB 2842, as amended, Berg. Solicitation: unfair business practices.

Existing law provides for licensing and regulation of health care service plans by the Department of Managed Health Care. Existing law provides for regulation of health insurers by the Insurance Commissioner. Existing law regulates the solicitation of health care service plan products and health insurance. Existing law prohibits certain unfair insurance practices specifically and unfair business practices in general. Existing law provides that a willful violation of provisions governing health care service plans is a crime.

This bill would provide that it is an unfair business practice for *health insurance agents and various parties engaged in the solicitation of health care service plans and health insurance policies* to engage in cold lead advertising, as defined, when marketing a Medicare product or to use an appointment made to discuss a particular Medicare product to solicit the sale of another Medicare product or other health care coverage or health insurance products, except as specified. Because a willful violation of provisions governing health care service plans would be a

crime, this bill would impose a state-mandated local program by creating a new crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1361.1 is added to the Health and Safety
2 Code, to read:

3 1361.1. It is an unfair business practice for a ~~health care service~~
4 ~~plan~~, solicitor, solicitor firm, or representative *of a health care*
5 *service plan* to sell, solicit, or negotiate the purchase of health care
6 coverage products by any of the following methods:

7 (a) The use of a marketing technique known as cold lead
8 advertising when marketing a Medicare product. As used in this
9 section, “cold lead advertising” means making use directly or
10 indirectly of a method of marketing that fails to disclose in a
11 conspicuous manner that a purpose of the marketing is health care
12 service plan sales solicitation and that contact will be made by a
13 ~~health care service plan~~, solicitor, solicitor firm, or representative
14 *of a health care service plan*.

15 (b) The use of an appointment that was made to discuss a
16 particular Medicare product or to solicit the sale of a particular
17 Medicare product in order to solicit the sale of another Medicare
18 product or other health care coverage products, unless the consumer
19 specifically agrees in advance of the appointment to discuss that
20 other Medicare product or other types of health care coverage
21 products during the same appointment. As used in this section,
22 “Medicare product” includes Medicare Parts A, B, C, and D, and
23 Medicare supplement plans.

24 SEC. 2. Section 790.037 is added to the Insurance Code, to
25 read:

26 790.037. It is an unfair business practice for a ~~health insurer~~
27 ~~or~~ health insurance agent to sell, solicit, or negotiate the purchase
28 of health insurance by any of the following methods:

1 (a) The use of a marketing technique known as cold lead
2 advertising *when marketing a Medicare product*. As used in this
3 section, “cold lead ~~advertising when marketing a Medicare product~~”
4 *advertising*” means making use directly or indirectly of a method
5 of marketing that fails to disclose in a conspicuous manner that a
6 purpose of the marketing is health insurance sales solicitation and
7 that contact will be made by a ~~health insurer or~~ health insurance
8 agent.

9 (b) The use of an appointment that was made to discuss a
10 particular Medicare product or to solicit the sale of a particular
11 Medicare product in order to solicit the sale of another Medicare
12 product or other health insurance products, unless the consumer
13 specifically agrees in advance of the appointment to discuss that
14 other Medicare product or other types of health insurance products
15 during the same appointment. As used in this section, “Medicare
16 product” includes Medicare Parts A, B, C, and D, and Medicare
17 supplement ~~plan~~ plans.

18 SEC. 3. No reimbursement is required by this act pursuant to
19 Section 6 of Article XIII B of the California Constitution because
20 the only costs that may be incurred by a local agency or school
21 district will be incurred because this act creates a new crime or
22 infraction, eliminates a crime or infraction, or changes the penalty
23 for a crime or infraction, within the meaning of Section 17556 of
24 the Government Code, or changes the definition of a crime within
25 the meaning of Section 6 of Article XIII B of the California
26 Constitution.